IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 5 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF WEALTH-TAX

Versus

SUBHADRA VENICHAND KOTHARI

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Appearance:

1. WEALTH TAX REFERENCE No. 5 of 1995
MR BB NAIK with MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent No. 1

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CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 08/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question has been referred by the Income-tax Appellate Tribunal, Ahmedabad under Section 27(1) of the Wealth-tax Act, 1957 in respect of assessment year 1987-88 :-

"Whether, the Appellate Tribunal is right in law and on facts in setting aside the order passed by the Commissioner of Wealth-tax whereby he had directed the Wealth-tax Officer to substitute the value of the property at Rs.7,37,576/- i.e. the purchase value instead of Rs.39,162/- as declared by the assessee ?"

2. The assessee an individual purchased residential flat at Bombay in the year 1985 for Rs.7,37,576/-. The assessee declared its value at Rs.39,162/- under Rule 1BB. The Wealth-tax Officer accepted the value shown by the assessee. However, the Commissioner of Wealth-tax directed the Wealth-tax Officer to substitute the value of the property by taking the purchase price of Rs.7,37,576/-. The assessee succeeded in appeal before the Tribunal as the Tribunal followed the decision of this Court in the case of CWT vs. Kasturbhai Mayabhai, (1986) 164 ITR 107 laying down that section 7(4) of the Wealth-tax Act applies only in a case where the assessee himself opts or wishes for valuation of his or her property under that Section otherwise Rule 1BB will be applicable if other requirements or conditions under the Rule are satisfied. The said decision came to be confirmed by the Supreme Court in CWT vs. Sharvan Kumar Swarup & Sons, (1994) 210 ITR 886 wherein the Apex Court took the view that Rule 1BB was intended to impart uniformity in valuation and to avoid vagaries and disparities resulting from application of different modes of valuation in different cases where the nature of the property is similar and further that Rule 1BB partakes of the character of a rule of evidence. It deems the market value to be the one arrived at on the application of a particular method of valuation which is also one of the recognized and accepted methods. The rule is procedural and not substantive and is applicable to all proceedings pending on April 1, 1979, when the rule came into force.

3. Following the aforesaid decision, our answer to the question referred for our opinion is in the affirmative i.e. in favour of the assessee and against the revenue.

4. The reference accordingly stands disposed of with

no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-